Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1999

HILLCREST DEVELOPMENT,
a California Limited Partnership,
Petitioner,
vs.
COUNTY OF RIVERSIDE, a Public Entity;
R. WAYNE WATTS, Treasurer-Tax Collector
of the County of Riverside;
N.R.L.L., INC., a California Corporation;
SPAN, L.L.C., a Limited Liability Company,
Respondents.

Petition for Writ of Certiorari
To The Court of Appeal of California
Fourth District, Division Two

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHERE NO ANTICIPATORY TAX RELIEF IS SOUGHT BY A PROPERTY OWNER, ARE A MUNICIPALITY AND ITS TAX COLLECTOR WHO DEPRIVED THE PROPERTY OWNER OF HIS REAL PROPERTY WITHOUT DUE PROCESS WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS THE RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

ARE PRIVATE PERSONS WHO PARTICIPATE WITH A MUNICIPALITY AND ITS TAX COLLECTOR IN THE DEPRIVATION OF REAL PROPERTY IN VIOLATION OF THE DUE PROCESS CLAUSE WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS A RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Court below. Rule 29.6 of the Rules of the Supreme Court does not apply in that the Petitioner is a limited partnership.

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PETITION FOR WRIT OF CERTIORARI
To The Court of Appeal of California
Fourth District, Division Two

Petitioner, HILLCREST DEVELOPMENT ("Hillcrest Development"), respectfully prays that a writ of certiorari issue to review the judgment of the California Court of Appeal, for the Fourth District, Division Two, entered in the above-entitled case on November 9, 1999 and in which discretionary review was denied by the California Supreme Court on February 2, 2000.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

There are no official or unofficial reports. The Opinion of the Court of Appeal of California is set forth in its entirety in the Appendix.

STATEMENT OF JURISDICTION

1. The Petition Has Been Filed Within 90 Days of the Denial of Discretionary Review by the California Supreme Court.

On February 2, 2000, the California Supreme Court denied discretionary review of the judgment of the Court of Appeal which had been entered on November 9, 1999. No rehearing was requested and no extension of time to file the Petition has been sought.

2. The Statutory Provision Conferring Jurisdiction Upon This Court to Review on a Writ of Certiorari the Judgment.

The statutory provision conferring jurisdiction on this Court jurisdiction to review on a Writ of Certiorari the judgment and orders in question is 28 U.S.C. §1257(a).

3. Compliance With Rule 29.4(b) or (c) of the Rules of the Supreme Court.

Notice is not required under Rule 29.4(b) or 29.4(c) of the Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, RULES AND REGULATIONS INVOLVED

Section 1 of AMENDMENT XIV to the United States Constitution:

> **"Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State, wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia."

28 U.S.C. § 1341

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

STATEMENT OF THE CASE

1. INTRODUCTION

Without providing Hillcrest Development with notice of the tax sale as required by the Due Process Clause, Respondents County of Riverside, a municipality ("County of Riverside"), and R. Wayne Watts, its tax collector ("Tax Collector"), sold Hillcrest Development's million dollar real property for about 15% of its value at the tax sale to Respondent N.R.L.L., Inc. As a result of the tax sale, all delinquent property taxes were paid. Within a month of discovering that its property had been sold, Hillcrest Development sought to recover the property through a civil rights action brought under the provisions of 42 U.S.C. §1983. It did not seek any anticipatory relief as to any tax or to stop, enjoin, suspend or restrain the collection of taxes. It did not question the validity of the tax that was collected or its amount. Regardless, the California Court of Appeal ruled that the Respondents are wholly immune from a suit under 42 U.S.C. §1983 as a result of this Court's decisions in Fair Assessment in Real Estate Assn. v. McNary, 454 U.S. 100 (1981) and National Private Truck Council, Inc. v. Oklahoma Tax Commissioner, 515 U.S. 582 (1995).

As a result of the California Court of Appeal's decision, Hillcrest Development and similarly situated property owners in the County of Riverside have no remedy for the failure of the County of Riverside and the Tax Collector to provide notice as required by the Due Process Clause prior to the deprivation of their property.

2. STAGE AS TO WHEN THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED AND HOW THEY WERE PASSED UPON BY THE COURTS

The federal questions were first raised in the Complaint filed by Hillcrest Development when it sought relief under the Civil Rights Act [42 U.S.C. §1983] to invalidate the tax deed or for damages as a result of the violation of Hillcrest Development's right to Due Process. The defendants sought summary judgment based upon a claim that the action was barred by Section 3725 of the California Revenue and Taxation Code. Hillcrest asserted that the applicable statute of limitations was the California personal injury statute based upon this Court's determination in Wilson v. Garcia, 471 U.S. 261 (1985). The places in the record where the matters appear are the Complaint filed by Hillcrest Development, the Motion for Summary Judgment filed by the County of Riverside and Tax Collector, the Opposition to the Motion filed by Hillcrest Development, and the Order granting the Motion for Summary Judgment.

On appeal, and in their Brief, the County of Riverside and the third party defendants raised for the first time the claim that this Court's decision in Fair Assessment, supra, and National Private Truck, supra, barred a §1983 suit against a municipality and its Tax Collector as a matter of law. The Court of Appeal determined that, though Hillcrest Development was correct as to the applicable statute of limitations, the §1983 action was nevertheless barred by the principles established by this Court in Fair Assessment and National Private Truck. The place where the determination was made by the Court of Appeal is at pages A-19 - A-22 [Appendix] of its Opinion.

The federal questions were raised again in Hillcrest Development's Petition for Review in the California Supreme Court, which Petition was summarily denied.

3. STATEMENT OF FACTS

The Statement of Facts is based upon undisputed facts or facts accepted as true for purposes of deciding the Motion for Summary Judgment brought by the Tax Collector and the County of Riverside.

On March 26, 1996, and without actual notice to Petitioner Hillcrest Development, the Tax Collector sold Hillcrest Development's tax defaulted real property to N.R.L.L. The County of Riverside and the Tax Collector failed to make a reasonable effort to obtain either Hillcrest Development's last known address or even the phone number and address of its general partner ("General Partner"), whose name and county of residence were known to the Tax Collector, as well as the County of Riverside, and whose phone number and address were listed in the phone directory of the County of residence, which County (Orange) adjoined the County of Riverside. The fictitious business statement filed by Hillcrest Development in Orange County also listed its correct address and phone number. Other information was also in the possession of the County of Riverside or the Tax Collector which would have enabled either of them to ascertain the current address of Hillcrest Development, its General Partner, or counsel for Hillcrest Development.

In September of 1997, the General Partner discovered a "for sale" sign on Hillcrest Development's real property, which was located in the City of Elsinore, County of Riverside. Upon calling the number on the "for sale" sign, the General Partner learned that N.R.L.L. had purchased the real property

for about 15% of its million dollar value at the tax sale in 1996. The General Partner immediately contacted the representative of the Tax Collector, informed him that neither Hillcrest Development nor the General Partner had received any notice of the tax sale, and requested that the tax sale be rescinded and that its real property be returned. When the Tax Collector refused to take any action and within one month of discovering the "for sale" sign, Hillcrest Development filed a civil rights action under Section 1983 of Title 42 of the United States Code to set aside the Tax Deed, quiet title, and for damages. The action was based upon the requirement established by this Court in Mennonite Board of Missions v. Adams, 462 U.S. 791, 800 (1983), that actual notice be provided of the tax sale by the taxing authorities, prior to depriving the interested party of his property rights, even if an interested party is in default with respect to property taxes and should have protected itself, so long as the interested party's address is "reasonably ascertainable" by the taxing authorities. The civil rights action of Hillcrest Development named as defendants the Tax Collector, the County of Riverside, and the purchasers of the real property.

In its civil rights action, Hillcrest Development did not seek a refund of any tax and did not seek to enjoin, suspend or restrain the collection of any tax.

After the answer was filed by the Respondents, the County of Riverside and Tax Collector filed a Motion for Summary Judgment based upon the assertion that, regardless of the conduct of the Tax Collector and regardless of whether a property owner's Due Process rights were violated, a property owner is time barred from bringing any type of action to invalidate the Tax Deed or recover damages unless brought within one year of the execution of a tax deed. This assertion was based upon Section 3725 of the California Revenue &

Taxation Code. None of the Defendants asserted in the Motion for Summary Judgment that the action was precluded by the principle of comity or by the "Tax Injunction Act".

Though Hillcrest Development asserted that the applicable statute of limitations for the civil rights action is the personal injury statute or Section 340, subdivision 3, of the Code of Civil Procedure as a result of this Court's decision in Wilson v. Garcia, 471 U.S. 261 (1985), the trial court disagreed, and granted the Motion and dismissed the action as to all of the defendants. An appeal was timely filed.

On appeal, the Tax Collector and County of Riverside raised for the first time their assertion that "section 1983 does not afford a remedy in state tax cases". Page A-17, Appendix.

Though finding that the trial court committed error and that Respondents N.R.L.L and SPAN's claim that Wilson requires the Court to look to the most analogous statute of limitations "grossly misrepresents Wilson," it stated that the error was harmless in that a civil rights action could not be maintained in a tax case because of the potential "for a chilling effect on state tax administration that was a motivating concern in Fair Assessment". Page A-22, Appendix. It also concluded that, since the California tax scheme allowed for a refund of taxes, the "adequate remedy" exception to the principle of comity and the "Tax Injunction Act" did not apply. Page A-22, Appendix.

4. ARGUMENT

A. Summary of Reasons for Review by the Supreme Court

1. Conflict with Decisions of This Court and with Decisions of the United States Courts of Appeal

The California Court of Appeal has decided important federal questions in a way that conflict with decisions of the United States Courts of Appeals and with relevant decisions of this Court. By denying a remedy to a property owner who has been deprived of his property without notice, it has rendered ineffective the notice requirement in Mennonite, supra. It has misapplied the "Tax Injunction Act" (Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S.Ct. 2069, 2076 (1999)). It has changed the definitional meaning of "adequate remedy" in considering whether the exception to the "Tax Injunction Act" and principle of comity apply. See California v. Grace Brethren Church, 457 U.S. 393, 411-412 (1982). The Court of Appeal creates an absolute immunity not only for a county's tax collector, but also the municipality, which is contrary to this Court's decision in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993).

2. The Unpublished Decision May Still Be Used by the Tax Collector or the County of Riverside to Curtail Any Future Proceeding or Set Up a Defense of Reasonableness

Though the case was a case of first impression, and Hillcrest Development requested its publication in writing and at oral argument, the Court of Appeal issued its final Opinion as "Not to Be Published." In California, an unpublished opinion

has virtually no chance of being reviewed by the California Supreme Court. See 2 *California Civil Appellate Practice*, §22.7 (California Continuing Education of the Bar, 1999). The reason is because the case generally does not have precedential value. However, there are exceptions. Rule 977(b), California Rules of Court; 9 Witkin, *California Procedure*, Appeal §716 (4th ed. 1996). If another aggrieved property owner brings a civil rights action against the Tax Collector and County of Riverside, there can be no doubt that the Tax Collector would show the litigant the prior determination of the same Court of Appeal that would hear his appeal. The Tax Collector may also assert it as a basis for the "reasonableness" of his conduct in a subsequent civil rights case where he could assert qualified immunity.

Though the Opinion was not published, the case received notoriety in that it was reported in a newspaper serving Riverside County because of the nature of the action and the naming of the Tax Collector and County of Riverside as defendants.

3. In Order to Ensure National Uniformity, Only this Court Should Determine if Agencies Involved in Tax Collection Should be Entirely Immune from Suit Under the Civil Rights Act

Because of the recognized need by this Court to ensure uniformity in civil rights action and to reduce expensive litigation and uncertainty, it should be this Court who establishes any rule which exempts an entire class of state or municipal employees from liability under the Civil Rights Act.

There has been an ever increasing effort by the States to use this Court's decision in Fair Assessment as a basis to ban any action either in federal court or state court when such action

might have a tangential effect on the collection of taxes. See, e.g., Keleher v. New England Telephone & Telegraph Co., 947 F.2d 547 (2d Cir. 1991).

B. This Court Should Grant Review Because the Court of Appeal Has Created Complete Immunity From a Civil Rights Suit for the County of Riverside and Its Officials in All Tax Related Cases Which is Contrary to a Decided Case by This Court

In Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993), Chief Justice Reinquist stated in a unanimous decision:

> "(U)nlike various government officials, municipalities do not enjoy immunity from suit--either absolute or qualified--under §1983. In short, a municipality can be sued under §1983, but it cannot be held liable unless a municipal policy or custom caused the constitutional injury."

The California Court of Appeal concluded in essence that this Court created a separate immunity in Fair Assessment and National Private Truck for the County and its Tax Collector merely because the constitutional injury occurred in connection with the tax process, i.e., the municipality and its tax collector cannot be sued under any circumstance because recovery by an aggrieved property owner may have a chilling effect on the collection process. This conclusion, if allowed to stand, will shield a municipality and its tax collector from any claim that arises under the Constitution merely because they are involved in the process of raising taxes.

C. Any Expansion of the Principles Established in *Fair Assessment* and *National Private Truck* Should Only Be Done by This Court Because of the Importance of Having National Uniformity in Civil Rights Actions

The need for national uniformity in civil rights actions was recognized by this Court in Wilson v. Garcia, supra, with respect to the issue of the applicable statute of limitations. Any expansion of the limited doctrine established in Fair Assessment, supra and National Private Truck, supra, should only be accomplished by this Court in order that there is national uniformity with respect to civil rights actions so that both uncertainty and time consuming litigation are eliminated.

D. The Expansion of the "Tax Injunction Act" and the Principle of Comity by the California Court of Appeal is Unwarranted and is Contrary to Decisions of This Court

The County of Riverside has received full payment of the property taxes, has not been sued for a repayment of the taxes, and Hillcrest Development's civil rights action was not a disguised effort on the part of Hillcrest Development to seek review of the constitutionality of a tax without payment. It is a suit resulting solely from the damages attributable to the deprivation of Hillcrest Development's property in violation of the Due Process Clause. The County of Riverside or the Tax Collector cannot avoid suit by asserting that because of the tangential effect on their taxing activity that the principle of comity and "Tax Injunction Act" precludes any relief.

In June of 1999, this Court in Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S.Ct. 2069, 2076 (1999) explained the meaning and purpose of "The Tax Injunction Act" ["Act"]. It stated, supra:

"By its terms, the Act bars anticipatory relief, suits to stop ('enjoin, suspend or restrain') the collection of taxes." [emphasis added]

This Court also stated that the conclusion of the Second Circuit in the 1991 case of Keleher v. New England Telephone & Telegraph, 947 F.2d 547, 551 as to the intent of Congress in passing the Act was wrong. Id. In Keleher, supra, the Court of Appeals stated that the "Tax Injunction Act" "creates an absolute jurisdictional bar to federal involvement in state and local revenue collection schemes, and that, as a result, a federal court may not play any role at all in the tax enforcement efforts of state or local governments." The conclusion reached in Keleher, supra, was in essence adopted by the California Court of Appeal as to a civil rights action in the state court. Though Hillcrest Development had no other way to recover its property or damages for the unlawful taking of its property, the California Court of Appeal reasoned that, since Hillcrest Development could file a refund, it had an "adequate remedy at law". It did not and could not explain how such refund, even if sought, would compensate Hillcrest Development for the injury resulting from the violation of its Due Process rights or how it was plain or complete. See, Carey v. Piphus, 435 U.S. 247, 259 (1978) ("the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question"). As to the Court of Appeal's conclusion (page A-22. Appendix) that Hillcrest Development did not claim that the tax refund scheme was inadequate, such conclusion is nonsensical. Hillcrest Development brought a civil rights action under federal law because California does not provide for relief. The adequacy of the tax refund scheme is simply irrelevant to a post collection case or a case not involving the collection of taxes.

Even where the action is one to enjoin, restrain, or suspend, neither the "Tax Injunction Act" nor the principle of comity preclude a taxpayer's action where the state court remedy is inadequate, i.e., the constitutional issues will not be given a full hearing (California v. Grace Brethren Church, 457 U.S. 393, 411-412 (1982)), where the damages are irreparable, or where there is a cloud on title. Dows v. City of Chicago, 78 U.S. 108, 110 (1870); National Private Truck Council v. Oklahoma Tax Commissioner, 515 U.S. 582, 591 (ftn. 6) (1995). The damages are irreparable and there is a cloud on title.

The issue is not whether a state statute is constitutionally valid but rather whether the municipality and its official's conduct violated established constitutional standards. This is precisely the purpose of section 1983 suits. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The appropriate remedy for deprivation of a liberty and/or property interest without Due Process is to order the process that was due and any attendant damages which directly result from the failure to give the proper notice. Carey v. Piphus, supra.

E. Review is Necessary Because the California Court of Appeal has Extended the Principle of Comity and Anti-Injunction Act Even to the Non-Governmental Defendants

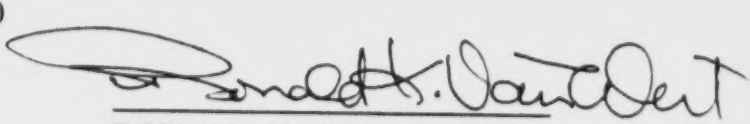
Private parties acting under color of state law are not entitled to the qualified immunity defense. Crawford-El v. Britton, 523 U.S. 574, 590 (ftn. 13 (1998)); F.E. Trotter, Inc v. Watkins, 869 F.2d 1312, 1318-1319 (9th Cir. 1989). They are subject to a civil rights action when they participate in a state action which results in the deprivation of the property of another. Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 942 (1982).

The right to sue a purchaser in order to quiet title as a result of the failure of the government to give notice or improper notice was recognized in Mennonite, supra.

5. CONCLUSION

Review is appropriate because of the necessity of resolving important questions of law, because of the effect of the Court of Appeal Opinion on the Tax Collector of a major County in California, which established that his actions in providing constitutionally mandated notice are not subject to judicial review under the Civil Rights Act, and because of the need to secure uniformity of decisions in civil rights actions.

Dated: April 14, 2000



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HILLCREST DEVELOPMENT

APPENDIX

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Court of Appeal Fourth District

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

HILLCREST DEVELOPMENT, Plaintiff and Appellant, v. COUNTY OF RIVERSIDE et al., Defendants and Respondents.	E023512 (Super.Ct.No. 303035) **OPINION**

APPEAL from the Superior Court of Riverside County. Richard G. Van Frank, Judge. Affirmed.

Ronald K. Van Wert for Plaintiff and Appellant.

William C. Katzenstein, County Counsel, and Dorothy L. Honn, Deputy County Counsel, for Defendants and

Respondent County of Riverside and R. Wayne Watts, Treasurer-Tax Collector of the County of Riverside.

Reid & Hellyer, James J. Manning, Jr., and Michael G. Kerbs for Defendants and Respondents N.R.L.L., Inc., and SPAN, L.L.C.

Plaintiff Hillcrest Development (Hillcrest) owned land worth over $1 million. However, it failed to pay property taxes on the land for at least six years in a row. As a result, the land was sold for taxes; the purchaser paid only $162,000 for it.

About three years before the sale, Hillcrest moved. It did not notify the tax collector of its change of address. When it came time to send notice of the sale, the tax collector tried to find Hillcrest's current address through Riverside County and Department of Motor Vehicle (DMV) records, as well as Riverside and Orange County telephone directories, but was unable to do so. The tax collector therefore sent notice of the sale to three of Hillcrest's former addresses. Hillcrest never received actual notice. Even though Hillcrest's former addresses were all in Orange County, the tax collector failed to check Orange County fictitious business name filings; doing so would have revealed Hillcrest's current address. The tax collector also failed to make inquiries regarding Hillcrest's general partner, even though his name was listed on numerous documents concerning Hillcrest.

Hillcrest filed this action to set aside the tax sale. The trial court granted summary judgment against Hillcrest on the ground that the applicable statute of limitations was Revenue and Taxation Code section 3725, which had run. In this appeal, Hillcrest argues (1) defendants were estopped to assert the statute of limitations, and (2) Hillcrest's complaint asserted federal civil rights causes of action (42 U.S.C. § 1983), and therefore the applicable statute of limitations was Code of Civil Procedure section 340, subdivision (3), which had not run.

To the extent that Hillcrest's complaint arises under state law, the trial court was correct. Revenue and Taxation Code section 3725 was the applicable statute of limitations; it had run; and Hillcrest failed to raise a triable issue of fact regarding estoppel.

To the extent that Hillcrest's complaint arises under 42 United States Code section 1983 (section 1983), the trial court erred. Code of Civil Procedure section 340, subdivision (3), was the applicable statute of limitations. There was at least a triable issue of fact with respect to whether it had run. The error, however, was harmless. Defendants were entitled to summary judgment in any event because section 1983 does not afford a remedy for allegedly unconstitutional state taxation.

I
FACTUAL BACKGROUND

The following facts are taken from the papers filed in support of and in opposition to defendants' motion for summary adjudication. Consistent with the applicable standard of review, we view the evidence in the light most favorable to the party opposing the motion — in this case, to Hillcrest. *(Abou-Jaoude v. British Airways* (1991) 228 Cal.App.3d 1137, 1139.)

Hillcrest is a limited partnership. Paul T. Salata is Hillcrest's general partner.

In 1984, Hillcrest acquired certain real property in Lake Elsinore. It paid taxes on the property only once, in 1988.

In 1984, when Hillcrest purchased the property, Hillcrest's address was 213 La Jolla Drive, Newport Beach. This address was listed on the deed. The deed also stated that, after recording, it was to be sent to Ronald K. Van Wert at 3151 Airway Avenue, Suite A-1, Costa Mesa.

Later in 1984, Hillcrest filed a certificate of limited partnership listing its La Jolla Drive address; again, acknowledgment was to be sent to Van Wert at his Airway Drive address.

In 1988, Hillcrest filed an amendment to its certificate of limited partnership. The amendment listed Hillcrest's address as 15707 Rockfield Boulevard, #215, Irvine; it listed Salata as its general partner, at the Rockfield Boulevard address; and it indicated acknowledgment was to be sent to Van Wert, at 1301 Dove Street, 10th Floor, Newport Beach. Also in 1988, Hillcrest recorded a deed affecting the property; the deed gave the Rockfield Boulevard address.

In 1989, Salata notified the tax collector that Hillcrest's address had changed to 3100 Airway Avenue, # 124, in Costa Mesa. This became its address of record on the tax roll.

Some time in 1993, Hillcrest moved to 3723 Birch Street, #11, Newport Beach. It did not notify the tax collector of this change of address. However, it did file a change of address with the post office. It also filed a fictitious business name statement listing this address and listing Salata as general partner, with his home address. The fictitious business name statement was, as required, filed in Orange County, where Hillcrest's principal place of business was located. (See Bus. & Prof. Code, § 17915.)

On February 8, 1996, the tax collector sent "Notices of Sale" (Rev. & Tax. Code, § 3701) to Hillcrest, by certified mail, addressed to each of its pre-1993 addresses: La Jolla Drive, Rockfield Boulevard, and Airway Avenue. They were all returned as undeliverable.

Before sending the notices, the tax collector tried, without success, to find Hillcrest's address using Riverside County and DMV records and the Riverside and Orange County telephone directories. It could have found Hillcrest, however,

by checking the Orange County fictitious business name filings. It could have found Salata through DMV records and the Orange County telephone directory. It could have found Van Wert at his Dove Street address, which was listed in Hillcrest's amended certificate of limited partnership, and through the Orange County telephone directory.

On March 26, 1996, the tax collector sold the property at auction to N.R.L.L., Inc. (NRLL). NRLL paid $162,000 for it; it was worth over $1 million. On April 24, 1996, the tax deeds to NRLL were recorded. NRLL later conveyed the property to SPAN, L.L.C. (SPAN). Hillcrest continued to pay for utilities for the property.

On July 19, 1996, Nelson-Brown Equities, Inc. (Nelson-Brown), an asset search company, notified Hillcrest that it appeared to be entitled to unclaimed assets worth approximately $83,000. Nelson-Brown would not disclose the nature or source of the assets unless Hillcrest entered into a fee agreement.

Salata discussed the matter with Van Wert, who was Hillcrest's attorney. Based on his own knowledge of Hillcrest's development activities, Salata believed one possible source of unclaimed funds was Riverside County (County). At Salata's request, Van Wert contacted the County and asked if it owed Hillcrest any money. County representatives responded that it did not owe Hillcrest any money.

Because Hillcrest was unable to identify the source of the funds on its own, it entered into a fee agreement with Nelson-Brown. In a letter dated October 15, 1996) Nelson-Brown disclosed to Hillcrest that: "The holder of the unclaimed funds is the County of Riverside. The form is in excess proceeds from the sale of [assessor's parcel numbers of the property]."

On November 7, 1996, Salata signed documents authorizing Nelson-Brown to act as Hillcrest's agent in

submitting a claim for the excess proceeds. These documents stated: "I, the undersigned, do hereby make Nelson-Brown Equities, Inc. my agent to apply for and collect the excess proceeds which you are holding and to which I am entitled from the sale of assessment number [assessor's parcel numbers of the property] sold at public auction. . . ." On December 18, 1996 (as to one parcel), and March 12, 1997 (as to the other), Nelson-Brown submitted Hillcrest's excess proceeds claim to the tax collector. (See Rev. & Tax. Code, § 4675.)

In September 1997, Salata saw a "for sale" sign on the property. He called the phone number listed on the sign and was told the property had been sold for taxes.

On October 14, 1997, Hillcrest filed this action.

On November 18, 1997, the County paid Hillcrest's excess proceeds claim.

II.
PROCEDURAL BACKGROUND

Hillcrest filed this action against the County, the tax collector, NRLL and SPAN.[1] Hillcrest alleged three causes of action: (1) to quiet title and to cancel the tax deed, against all defendants, (2) for civil rights violations (42 U.S.C. § 1983), against the County and the tax collector, and (3) for declaratory relief, against all defendants.

Defendants filed answers asserting various affirmative defenses, including that the action was barred by Revenue and Taxation Code section 3725.

On a date not reflected in the record, NRLL and SPAN filed a cross-complaint. On March 6, 1998, they filed a first amended cross-complaint against Hillcrest and Salata.

On May 28, 1998, the County and the tax collector filed a motion for summary judgment. Subsequently, NRLL and

SPAN were deemed to have joined in the motion. Defendants argued (1) the action was barred by Revenue and Taxation Code section 3725, and (2) the tax collector had complied with all statutory notice requirements.

On August 4, 1998, the trial court granted the motion on the ground that the action was barred by Revenue and Taxation Code section 3725 and dismissed the complaint.

On September 10, 1998, Hillcrest filed a timely notice of appeal.

On October 13, 1998, NRLL and SPAN dismissed their cross-complaint without prejudice.[2]

III
APPEALABILITY

We perceive a preliminary issue regarding appealability.

The judgment finally resolved all issues as between Hillcrest on the one hand and the County and the tax collector on the other hand. To that extent, it is clearly appealable. *(Hydrotech Systems, Ltd v. Oasis Waterpark* (1991) 52 Cal.3d 988, 993, fn. 3; *Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved on other grounds in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 171; *Buckaloo v. Johnson* (1975) 14 Cal.3 d 815, 821, fn. 3, disapproved on other grounds in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393, fn. 5.)

What is unclear is whether NRLL and SPAN are proper parties to the appeal. When Hillcrest filed its notice of appeal, their cross-complaint was still pending. Accordingly, as to them, the judgment was not final. *(American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 557; *G.E. Hetrick & Associates, Inc. v. Summit Construction &*

Maintenance Co. (1992) 11 Cal.App.4th 318, 325; *Holt v. Booth* (1991) 1 Cal.App.4th 1074, 1081.)

Later, NRLL and SPAN dismissed their cross-complaint without prejudice. Even assuming a subsequent dismissal can legitimate a previously filed appeal under other circumstances (but see Cal. Rules of Court, rule 2(c)), we question whether a dismissal without prejudice can do so. (See *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1429; *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434, 442-445; cf *Roy Brothers Drilling Co. v. Jones* (1981) 123 Cal.App.3d 175, 180.)

Nevertheless, the issues on which we ultimately resolve this appeal are essentially identical with respect to all defendants. Resolving them solely with respect to the County and the tax collector, while dismissing the appeal with respect to NRLL and SPAN, "would result in the fragmentation and multiplicity of appeals which the one final judgment rule seeks to avoid." *(G.E. Hetrick & Associates, Inc. v. Summit Construction & Maintenance Co., supra*, 11 Cal.App.4th at p. 326, fn. 5.) Under these circumstances, we may decide the issues with respect to all parties. (*Id.*, at pp. 325-326 and 326, fn. 5; see also *Homestead Savings v. Darmiento* (1991) 23 0 Cal.App. 3d 424, 430, fn. 5.)

IV
CAUSES OF ACTION TO INVALIDATE THE TAX SALE

A. *The Applicable Statute of Limitations.*

Chapter 7 of the Revenue and Tax Code (Rev. & Tax. Code, §§ 3691-3731.1) prescribes the procedures for the sale of tax-defaulted property to private parties. Tax defaulted property cannot be sold until it has remained in default for at least five

years. (Rev. & Tax. Code, § 3691, subd. (a)(1); see also Rev. & Tax. Code, § 3361.) Throughout these five years, and up until the property is sold, the owner has the right to redeem it by paying the delinquent taxes, plus interest, costs and fees. (Rev. & Tax. Code, §§ 3707, subds. (a), (d), 4101, 4102, 4103.)

Revenue and Taxation Code section 3701 requires the tax collector to "send notice of the proposed sale by certified mail with return receipt requested to the last known mailing address, if available, of parties of interest. . . ."[3] It further requires the tax collector to "make a reasonable effort to obtain the name and last known mailing address of parties of interest." Revenue and Taxation Code section 3725, however, provides: "A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced within one year after the date of execution of the tax collector's deed."

Hillcrest's first cause of action was to quiet title. "The law is clear that the theory of relief underlying an action for quiet title ... determines which statute of limitations applies. [Citations.]" *(Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615, and cases cited.) To the extent that Hillcrest's right to quiet title turned on the invalidity or irregularity of the tax sale, the applicable statute of limitations was Revenue and Taxation Code section 3725.

Hillcrest's third cause of action was for declaratory relief. A declaratory relief cause of action is governed by the statute of limitations applicable to the analogous cause of action for coercive relief. (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 389; *Engstrom v. Kallins* (1996) 49 Cal.App.4th 773, 784.) Thus, once again, to the extent the declaratory relief cause of action was based on the invalidity or irregularity of the tax sale, it, too, was subject to Revenue and Taxation Code section 3725.

B. *Estoppel to Assert the Statute of Limitations.*

Revenue and Taxation Code section 3725 had run before Hillcrest brought suit. Indeed, Hillcrest does not argue otherwise. It does contend, however, there was a triable issue of fact with respect to whether defendants were estopped from invoking the statute of limitations. As a basis for estoppel, Hillcrest relies on the alleged fact that the tax collector failed to give it due notice, together with the fact that, when it asked the County if it was owed any money, the County said no. The County and the tax collector fail to respond to this contention. (NRLL and SPAN merely respond that any estoppel runs against the County, not against them.) We do not take this as a concession that it has merit, however, because it does not.

It seems clear that failure to give notice of a tax sale does not give rise to an estoppel. *(Union Paving Co. v. East Del Paso Heights* (1963) 217 Cal.App.2d 772, 776777; see also *Howard v. State of California* (1963) 216 Cal.App.2d 281, 284-286.) "If an estoppel could be raised when the assertion is made that notice was not given, then the question could be presented in nearly every case where an irregularity occurred." *(Union Paving Co. v. East Del Paso Heights, supra,* at p. 777.) Numerous cases have held a challenge to a tax sale based on lack of notice may be barred by the statute of limitations. *(E.g., Kaufman v. Gross & Co.* (1979) 23 Cal.3d 750, 757-760; *Elbert, Ltd. v. Gross* (1953) 41 Cal.2d 322, 328-332; *Tannhauser v. Adams* (1947) 31 Cal.2d 169, 173-177; *Howard v. State of California, supra,* 216 Cal.App.2d at pp. 284-286.) While these cases did not address estoppel in so many words, they necessarily imply that estoppel is not available based on lack of notice. *(Union Paving Co. v. East Del Paso Heights, supra, at* p. 777.)

This appears to be a particular application of the more general principle that "estoppel will not be applied against the government if to do so would nullify a strong rule of policy adopted for the benefit of the public. [Citations.]" *(Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994-995.) In tax deed cases, the statute of limitations serves the important public purposes of ensuring stability of title and protecting finality in tax proceedings. (See *Sears v. County of Calaveras* (1955) 45 Cal.2d 518, 521-522; *Howard v. State of California, supra,* 216 Cal.App.2d at pp. 285-286.) Any resulting unfairness to the plaintiff is insufficient to outweigh these public purposes. "There is ... the unquestioned tax debt to justify the taking, and, in addition, the taxpayer is permitted at least six years within which to redeem or attack any supposed irregularity in the tax proceedings. Such period is a most reasonable allowance for the cure of the laxity of tax delinquency." *(Howard v. State of California, supra,* at p. 286.) For these reasons, we conclude that neither the County's failure to give notice nor its affirmative misrepresentation that it did not owe Hillcrest any money will estop it from invoking the statute of limitations.

Alternatively, even assuming the County could be estopped, we do not believe Hillcrest has raised a triable issue of fact with respect to estoppel. Estoppel is sometimes likened to equitable tolling. It differs, however, in that it does not literally toll the limitations period. That is, the time during which an estoppel is in effect is not simply subtracted from the total limitations period. The ultimate issue is whether the plaintiff failed to file within the limitations period due to reliance on the defendant's conduct. Accordingly, "[i]f there is still ample time to institute the action within the statutory period after the circumstances inducing delay have ceased to operate, the plaintiff who failed to do so cannot claim an estoppel. [Citations.]" *(Lobrovich v. Georgison (1956)* 144 Cal.App.2d

567, 573-574.) "[W]hen a substantial period for instituting proceedings supervened after expiration of the delay engendered by a party ... his conduct or representations will not estop him from asserting the bar of the statue . . . ." *(Industrial Indem. Co. v. Ind. Acc. Com.* (1953) 115 Cal.App.2d 684, 690; accord, *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 446, and cases cited; *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 716.)

In the *Santee* case, for example, the plaintiffs failed to present a timely governmental tort claim; they did present a timely late-claim application, but to the wrong public entity. That entity purported to grant the late-claim application and to deny the claim. *(Santee v. Santa Clara County Office of Education, supra,* 220 Cal.App.3d at p. 709.) On appeal, the plaintiffs argued this excused their failure to present a timely late-claim application to the correct public entity. The appellate court treated this as an estoppel argument. It held that, when the plaintiffs learned of their mistake, "[they] still had two months in which to submit a late-claim application to [the defendant] before the one-year jurisdictional limit expired. Their failure to do so precludes reliance on an estoppel." (*Id.*, at p. 716.)

Assuming, without deciding, a jury could find Hillcrest initially failed to file suit in reliance on defendants' conduct, any such reliance had clearly ended long before the end of the limitations period. On October 15, 1996, Nelson-Brown advised Hillcrest that the County was holding $83,000 in excess proceeds from the sale of its property. Moreover, on November 7, 1996, Salata signed documents authorizing Nelson-Brown to claim the excess proceeds from the sale of the property at public auction. Even at the latter point Hillcrest still had five-and-a-half months in which it could have filed a timely suit. It cannot claim it was still relying on any conduct of defendants.

Hillcrest, attempting to raise a triable issue of fact, submits Salata's testimony that: "I had no understanding of the meaning of 'excess proceeds', and I was told and understood that there may not be any moneys due Hillcrest. If there was, I did not believe that it had anything to do with the tax sale of the [p]roperty because when I discovered the 'for sale' sign in September of 199[7], we immediately found out about the tax sale . . . ." Even accepting Salata's claim that he "did not believe [the money] had anything to do with the tax sale," he never plainly testifies he did not know there had *been* a tax sale. But more important he never claims *Hillcrest* did not know there had been a tax sale. When Salata appointed Nelson-Brown as Hillcrest's agent, Hillcrest was deemed to know what Nelson-Brown knew. Thus, from that point on, Hillcrest was chargeable with knowledge of the tax sale. (Civ. Code, § 2332; *Chaplis v. County of Monterey* (1979) 97 Cal.App.3d 249, 262 [agents' knowledge, imputed to principal, defeats estoppel].)

C. *Exception for an Owner in Possession.*

Hillcrest also argues Revenue and Taxation Code section 3725 does not apply where the asserted procedural defect is jurisdictional and the original owner remained in possession of the property.

"The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxed, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title." *(Sears v. County of Calaveras, supra,* 45 Cal.2d at p. 521.) In delinquent tax cases, this rule has been more honored in the

breach than in the observance. Indeed, we have been unable to find a single case in which an owner actually benefited from it.

The owner in possession rule applies only "to owners who because of their possession could not be assumed to have actual knowledge of claims of adverse interest by persons not in possession." *(McCaslin v. Hamblen* (1951) 37 Cal.2d 196, 199.) When an owner owes delinquent taxes, however, "the very fact of his delinquency operates to charge him 'with notice that if he claims the invalidity of a tax deed to the state or of the proceedings leading up to it he must bring his action for that purpose within the statutory time.' [Citation.]" *(Kaufinan v. Gross & Co., supra,* 23 Cal.3d at p. 756, quoting *Sears v. County of Calaveras, supra,* 45 Cal.2d at p. 522.) "There appears to be no reason why an owner of land, although in exclusive and undisputed possession, should not be required to be alert to protect his rights as against his own delinquency in the payment of taxes." *(Sears v. County of Calaveras, supra,* at pp. 521-522; accord, *Edwards v. City of Santa Paula* (1956) 138 Cal.App.2d 375, 378-379.)

Salata testified that, on occasion, portions of Hillcrest's land were sold and delinquent taxes were paid out of escrow. He also testified, or at least implied, that he was unaware there were any delinquent taxes not paid in this way. Once again, however, Salata never testified that Hillcrest, as an entity, was unaware that any taxes were due. In any event, we do not believe the applicability of the owner in possession rule turns on whether the owner has actual knowledge of the delinquency. Rather, an owner is deemed to have constructive knowledge. An owner either knows or *should know* whether property taxes have been paid (at least in the absence of unusual circumstances not present here).

Hillcrest had not paid property taxes for six years. Despite Salata's claim of ignorance, Hillcrest was chargeable

with knowledge of the delinquency. Thus, even though it was in undisturbed possession, it knew or had reason to know that its property could be sold for taxes. Hillcrest therefore cannot claim the benefit of an "owner in possession" exception to Revenue and Taxation Code section 3725.

We conclude the trial court correctly granted summary judgment on both Hillcrest's cause of action to quiet title and its cause of action for declaratory relief, to the extent they were based on the invalidity or irregularity of the tax sale, on the ground that they were barred by the statute of limitations.

V
SECTION 1983 CAUSES OF ACTION

A. *The Applicable Statute of Limitations.*

Hillcrest's second cause of action was for a deprivation of civil rights under section 1983. Moreover, Hillcrest's first cause of action, to quiet title, and its third cause of action, for declaratory relief, both alleged, and were at least partially based on, the same alleged deprivation of civil rights. To this extent, all three causes of action were subject to the statute of limitations applicable to a federal civil rights action.

In Wilson v. Garcia (1985) 471 U.S. 261 [105 S.Ct. 1938, 85 L.Ed.2d 254], the Supreme Court held that a section 1983 action is governed by the state statute of limitations for a "tort action for the recovery of damages for personal injuries . . . ." (*Id.*, at p. 276.) In California, this is Code of Civil Procedure section 340, subdivision (3), which provides a one-year limitations period. *(City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1297; *Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App. 4th 1761, 1772; *Jackson v. Cedars-Sinai Medical Center* (1990) 220 Cal.App.3d

1315, 1323-1324; *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1563-1564.)

NRLL and SPAN characterize *Wilson* as holding that a section 1983 cause of action is governed by the most analogous state statute of limitations; they argue that here, Revenue and Taxation Code section 3725 is most analogous. This grossly misrepresents *Wilson*. *Wilson* recognized a section 1983 cause of action "can have no precise counterpart in state law.... [A]ny analogies to [state law] causes of action are bound to be imperfect." *(Wilson v. Garcia, supra,* 471 U.S. at p. 272, fn. omitted.) It emphasized the need for uniformity and predictability: "[A] simple, broad characterization of all § 1983 claims best fits the statute's remedial purpose. The experience of the courts that have predicated their choice of the correct statute of limitations on an analysis of the particular facts of each claim demonstrates that their approach inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *(Id.,* at p. 272, fn. omitted.) It described section 1983 as "a directive to select in each State, the one most appropriate statute of limitations for all § 1983 claims. The federal interests in uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored this simple approach." (*Id.*, at p. 275.) Accordingly, *Wilson* did not hold the "most analogous" state statute of limitations applies; it specifically held the state personal injury statute of limitations applies. (*Id.*, at pp. 276-279.)

Although Code of Civil Procedure section 340, subdivision (3), like Revenue and Taxation Code section 3725, prescribes a one-year limitations period, it affords a more generous accrual rule. "[F]ederal law governs when a cause of action accrues and the statute of limitations begins to run in a § 1983 action. [Citation.] Under federal law, the claim generally

accrues when the plaintiff 'knows or has reason to know of the injury which is the basis of the action.' [Citation.]" *(Cabrera v. City of Huntington Park* (9th Cir. 1998) 159 F.3d 374, 379-380, quoting *Elliott v. City of Union City* (9th Cir. 1994) 25 F.3d 800, 802.)

Here, there was a triable issue of fact with respect to when Hillcrest knew or should have known its property had been sold for taxes. A reasonable jury could find it had no reason to know this until it received Nelson-Brown's letter, dated October 15, 1996, advising it that it was entitled to excess proceeds from the County's sale of the property. A reasonable jury could even find it had no reason to know this until November 7, 1996, when Salata signed the forms making Nelson-Brown Hillcrest's agent for the purpose of claiming the excess proceeds. This action was filed on October 14, 1997 — less than a year from both of these dates. Thus, there was at least a triable issue of fact with respect to whether Hillcrest's causes of action, to the extent they were based on section 1983, were timely filed.

B. *The Availability of a Section 1983 Cause of Action to Challenge State Taxation.*

The County and the tax collector contend, however, that section 1983 does not afford a remedy in state tax cases. As a preliminary procedural matter, we note that they never raised this contention in their motion for summary judgment. Nevertheless, we have discretion to reach a pure question of law for the first time on appeal *(Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal. 4th 1, 24; *In re Marriage of Peters* (1997) 52 Cal.App. 4th 1487, 1490) — even on appeal from a summary judgment. *(Cislaw v. Southland Corp.* (1992) 4 Cal.App. 4th

1284, 1297.) This contention presents such a pure question of law.

Hillcrest does not object to our reaching this contention. To the contrary, after mentioning that it was not raised below, Hillcrest proceeds to respond to it on the merits. Hillcrest does not claim that, if this contention had been made below, it could have introduced additional evidence which would have raised a triable issue of fact on this issue. (Cf. *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 70-71.) Thus, we believe Hillcrest has waived any objection to our considering it.

The contention finds its source in two United States Supreme Court cases. In the first of these, *Fair Assessment in Real Estate Assn. v. McNary* (1981) 454 U. S. 100 [102 S.Ct. 177, 70 L.Ed.2d 271], the plaintiffs filed a section 1983 action, alleging certain local real property reassessment practices violated equal protection and due process. Individual plaintiffs sought a refund and punitive damages; an organizational plaintiff sought an award of the expenses it had incurred in seeking more equitable assessments. (*Id.*, at pp. 105-106.)

The Supreme Court held "taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete, and may ultimately seek review of the state decisions in this Court. [Citations.]" *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 116, fn. omitted.)

The court began by noting that under the Tax Injunction Act federal courts are barred from enjoining the collection of a state tax, at least where there is "a plain, speedy and efficient remedy" in state court. *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 103, quoting 28 U.S. C. § 1341.) The Tax Injunction Act, it indicated, merely reflects broader

principles of comity. *(Fair Assessment, supra,* at p. 103.) As it also noted, it had previously held, based on comity, that federal courts "may not even render declaratory judgments as to the constitutionality of state tax laws." *(Ibid.;* see also *id.,* at pp. 110-111.)

The court concluded comity also barred an action for damages based on the unconstitutionality of a state tax, for two reasons. *(Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at pp. 113-115.) First, "[t]he recovery of damages under the Civil Rights Act first requires a 'declaration' or determination of the unconstitutionality of a state tax scheme that would halt its operation." (*Id.*, at p. 115.) "In effect the district court must first enter a declaratory judgment .... We are convinced that such a determination would be fully as 'intrusive as the equitable actions that are barred by principles of comity." (*Id.*, at p. 113, fn. omitted.) Second, " . . . damages actions, no less than actions for an injunction, would hale state officers into federal court every time a taxpayer alleged the requisite elements of a § 1983 claim." (*Id.*, at p. 115.) "[S]uch officials, faced with the prospect of personal liability to numerous taxpayers, not to mention the assessment of attorney's fees under 42 U.S.C. § 1988, would promptly cease the conduct found to have infringed petitioners' constitutional rights, whether or not those officials were acting in good faith. In short, petitioner's action would 'in every practical sense operate to suspend collection of the state taxes . . . '" (*Id.*, at p. 115, quoting *Great Lakes Dredge & Dock Co. v. Huffman* (1943) 319 U.S. 293, 299 [63 S.Ct. 1070, 87 L.Ed. 1407].)

Next, in *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n* (1995) 515 U.S. 582 [115 S.Ct. 2351, 132 L.Ed.2d 509], the plaintiffs claimed a state tax on motor carriers violated both the commerce clause and the privileges and immunities clause. They filed suit in state court, under both

state law and section 1983. *(National Private Truck Council, supra,* at p. 584.) The state courts held the tax unconstitutional, and awarded refunds; however, they refused to award any relief under section 1983. *(Id.,* at p. 585.)

The Supreme Court affirmed. It held: § 1983 does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases when an adequate legal remedy exists." *(National Private Truck Council, Inc., v. Oklahoma Tax Comm'n, supra,* 515 U.S. at p. 589.) It explained: "Just as *Fair Assessment* relied upon a background principle in interpreting § 1983 to preclude damages actions in tax cases brought in federal court, so we rely on the same principle in interpreting § 1983 to provide no basis for courts to award injunctive relief when an adequate legal remedy exists. Our interpretation is supported not only by the background principle of federal noninterference discussed in *Fair Assessment,* but also by the principles of equitable restraint discussed at length in that case. [Citation.] Whether a suit is brought in federal or state court, Congress simply did not authorize the disruption of state tax administration in this way." (*Id.,* at p. 590.)

The only question *Fair Assessment and National Private Truck* did not address directly was whether a section 1983 action challenging a state tax could be brought in state court, for damages. In California, this question was recently resolved in *General Motors Corp. v. City and County of San Francisco* (1999) 69 Cal.App.4th 448. There, General Motors claimed a municipal business tax violated the commerce clause by discriminating in favor of local manufacturers. It sued for a refund under both state law and section 1983. *(General Motors Corp., supra,* at p. 451.) On appeal, the court held the tax was indeed unconstitutional (*id.,* at pp. 452-454), and therefore, General Motors was entitled to a refund. (*Id.,* at pp. 454-456.) It also held, however: "A citizen, like General Motors, may not

maintain a section 1983 action challenging municipal taxation when an adequate state remedy exists." (*Id.*, at p. 460.) After discussing *Fair Assessment and National Private Truck,* it stated: "The conclusion drawn when these two cases are jointly considered is inescapable: section 1983 actions challenging state taxation are barred, whether the actions seek damages or equitable relief, and whether brought in federal or state court, provided an adequate state remedy exists." *(General Motors Corp., supra,* at p. 460.) It concluded General Motors was not entitled to attorney's fees under section 1983. *(General Motors Corp., supra,* at pp. 456-461.)

"Other state courts have likewise barred section 1983 damages claims challenging local taxes where an adequate state remedy exists. (Citations.]" *(General Motors Corp. v. City and County of San Francisco, supra,* 69 Cal.App.4th at p. 460, and cases cited; see also *Kerr v. Waddell* (1996) 185 Ariz. 457, 463-464 [916 P.2d 1173]; *State v. Golden's Concrete Co.* (Colo. 1998) 962 P. 2d 919, 925; *New England Legal Foundation v. City of Boston* (1996) 423 Mass. 602, 614 [670 N.E.2d 152].)

Hillcrest's only response is that it is not seeking to enjoin or prevent the collection of any tax. *Fair Assessment,* however, held the comity principle applies to section 1983 actions for damages. Here, if Hillcrest could invalidate the tax sale, the County would have to refund the sale price to NRLL and/or SPAN. The sale price, however, minus the excess proceeds which the County has already refunded to Hillcrest,[4] represent the taxes due. In essence, then, Hillcrest is seeking a refund, just like the plaintiffs in *Fair Assessment and General Motors.*

Hillcrest is not merely challenging a single isolated instance of alleged failure to give notice. In order to prevail on its section 1983 claim, Hillcrest would have to prove the tax collector had an official policy or custom of failure to give notice. *(Sinclair & Valentine Co. v. County of Los Angeles*

(1988) 201 Cal.App.3d 1021, 1027-1028; see generally *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658 [98 S. Ct. 2018, 56 L.Ed.2d 611].) Thus, Hillcrest is effectively seeking a declaration regarding the constitutionality of a state tax scheme. Moreover, such a declaration would have the same potential for a chilling effect on state tax administration that was a motivating concern in *Fair Assessment.* Hillcrest's section 1983 cause of action therefore presents all the vices that led the court in *Fair Assessment* to bar actions for damages.

Hillcrest does not argue it had no adequate legal remedy under state law. We believe an action for a refund under state law is precisely such an adequate remedy. Hillcrest's own failure to bring a refund action before the statute of limitations supervened does not render that remedy inadequate. *(Burris v. City of Little Rock* (8th Cir. 1991) 941 F. 2d 717, 721, fn. 4; *Aluminum Company of America v. Department of the Treasury of the State of Michigan* (6th Cir. 1975) 522 F.2d 1120, 1123-1125; *Henry v. Metropolitan Dade County* (5th Cir. 1964) 329 F.2d 780, 781; see also *Fair Assessment in Real Estate Assn. v. McNary, supra,* 454 U.S. at p. 116, fn. 8 ["no significant difference" between adequacy of state remedy for purposes of comity and adequacy of state remedy for purposes of Tax Injunction Act].) This is not a case in which the taxpayer, due to lack of notice, had no way of bringing a refund action before the expiration of the limitations period. Hillcrest had notice of the tax sale more than five months before the end of the limitations period. Thus, we need not consider whether in such a case a state refund action would be an adequate remedy.

We conclude Hillcrest could not state a claim under section 1983. Accordingly, the trial court properly granted summary judgment on all of Hillcrest's causes of action to the extent that they were based on an alleged deprivation of civil rights.

VI
DISPOSITION

The judgment is affirmed. Defendants shall recover costs against Hillcrest.

NOT TO BE PUBLISHED

/s/ Richii

We concur:

/s/ McKinster
Acting P. J.

/s/ Ward
J.

FILED
AUG 04 1998

Superior/Municipal Court
of Riverside County

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

HILLCREST DEVELOPMENT, a California Limited Partnership,	) Case No. 303035
Plaintiff,	) ORDER GRANTING) MOTION FOR) SUMMARY) JUDGMENT AND) JUDGMENT OF) DISMISSAL
v.	
COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax	)

Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company; and all persons claiming by, through or under such person, and all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud on plaintiff's title thereto, named as DOES 1-20, inclusive,

Defendants.

N.R.L.L., INC. a California corporation,

Cross-Complainant,

v.

HILLCREST DEVELOPMENT, a California Limited Partnership; PAUL SALATA, general partner of HILLCREST DEVELOPMENT; all persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the real property

described in the cross-complaint)
adverse to cross-complainant's)
ownership or any cloud on cross-)
complainant's title thereto; and,)
DOES 1 through 200, inclusive,)
)
Cross-Defendants.)
)

The motion of Defendants, County of Riverside and R. Wayne Watts, Tax Collector, for summary judgment, and the joinder in such motion of Defendants N.R.L.L. and Span, LLC, came on regularly for hearing before this Court in Department 8, the Honorable Richard G. Van Frank, Judge Presiding. Ronald K. Van Wert appeared as attorney for Plaintiff, Hillcrest Development; James J. Manning, Jr. appeared as attorney for Defendants and Cross-Complainants, N.R.L.L., Inc. and Span, LLC; and William D. Kenison appeared for Defendants and moving parties, County of Riverside and R. Wayne Watts, Tax Collector.

After full consideration of the evidence set forth in the papers submitted, the Court finds that Plaintiff's Complaint to Quiet Title, Cancel Tax Deeds, Deprivation of Rights, Privileges or Immunities Secured by the Constitution, and Declaratory Relief, is barred as a matter of law by Section 3725 of the California Revenue and Taxation Code in that the action was not filed within one year after the execution of the tax deeds by Tax Collector. The Court's determination is set forth in the court reporter's record of the hearing on the motion, as required by Code of Civil Procedure section 437c(g).

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment is GRANTED and that this judgment of dismissal of the complaint

shall be entered forthwith against Plaintiff, Hillcrest Development, a California Limited Partnership, which shall recover nothing from defendants. The cross-complaint is hereby severed.

Dated: AUG 04 1998

/s/
Richard G. Van Frank
Judge of the Superior Court

APPROVED AS TO FORM:
LAW OFFICES OF
RONALD K. VAN WERT

Dated: July 17, 1998

By: /s/
Ronald K. Van Wert for
Plaintiff, Hillcrest
Development, a
California Limited
Partnership

REID & HELLYER
a PROFESSIONAL
CORPORATION

Dated: July 20, 1998

By: /s/
James J. Manning, Jr.
Attorneys for
Defendants/Cross-
Complainants N.R.L.L.,
Inc., and SPAN, LLC

FILED
FEB -2 2000

Frederick K. Ohlrich Clerk
Deputy

Fourth Appellate District, Division Two, No. E023512
S084297

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

HILLCREST DEVELOPMENT, Appellant

v.

COUNTY OF RIVERSIDE Et Al., Respondents

Appellant's petition for review DENIED.

/s/ CHIN
Acting Chief Justice

1. The complaint also named Land Disposition Company as a defendant. Apparently this is a fictitious business name used by NRLL, rather than a separate entity.

2. We hereby grant NRLL and SPAN's request for judicial notice of their request for dismissal.

3. "Parties of interest" are defined as "any person with title of record to all or any portion of the property," together with all "lienholders of record." (Rev. & Tax Code, § 4675.)

4. We note — but need not resolve — the lurking question of whether Hillcrest lost whatever rights to invalidate the sale it may have had by claiming and accepting the excess proceeds.

Supreme Court, U.S.
FILED
MAY 22 2000
CLERK

(2)

No. 99-1708

IN THE

Supreme Court of the United States

HILLCREST DEVELOPMENT,
a California Limited Partnership,

Petitioner,

v.

COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENTS N.R.L.L., INC. AND SPAN, L.L.C.

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13PP

STATEMENT PURSUANT TO RULE 29.6

Neither corporate respondent has a parent company and no publicly held company owns 10% or more of the stock of either corporate respondent.

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STATEMENT OF FACTS

The petition on file herein fails to cite a number of facts which should be considered by the Court in considering the petition. As a result, respondents N.R.L.L., Inc. ("NRLL") and SPAN, L.L.C. ("SPAN") hereby submit this statement of facts pursuant to Rule 15.2 of the Rules of the Supreme Court.

In 1984, Hillcrest acquired the real property at issue ("the Property"). It paid the taxes on the Property only once, in 1988, when it paid and current delinquent taxes, interest and penalties.

From 1984 to 1993, Hillcrest relocated its operations on three separate occasions. On only one occasion did Hillcrest notify respondent R. Wayne Watts ("the Tax Collector") of its change of address, that being in 1989. When it relocated its operations for the last time in 1993, Hillcrest did not notify the Tax Collector of the change of address. On February 8, 1996, the Tax Collector sent notices of tax sale to Hillcrest, by certified mail, to all of Hillcrest's known addresses. Before sending the notices, the Tax Collector attempted without success, to find Hillcrest's address using County and Department of Motor Vehicle records and telephone directories in Riverside and Orange Counties.

On March 26, 1996, the Tax Collector sold the Property at auction to NRLL. On April 24, 1996, the tax deeds to NRLL were recorded. NRLL later conveyed the Property to SPAN.

On July 19, 1996, Nelson-Brown Equities, Inc., an asset search company, notified Hillcrest that it appeared to be

entitled to unclaimed assets worth approximately $83,000. Because Hillcrest was unable to identify the source of the funds on its own, it entered into a fee agreement with Nelson-Brown. In a letter dated October 15, 1996, Nelson-Brown disclosed to Hillcrest that: "The holder of the unclaimed funds is the County of Riverside. The form is in excess proceeds from the sale of [the Property]." As a result, within seven months of the sale of the property and 6 months of the tax deeds to NRLL, Hillcrest had actual knowledge the Property had been sold by the County in a tax sale. Nevertheless, Hillcrest waited for a year, filing the underlying action on October 14, 1997.

The petition, in the "Questions Presented for Review" section, implies that NRLL and SPAN participated "with the [County] and the [Tax Collector] in the deprivation of real property in violation of the due process clause." However, at no time did Hillcrest allege or present any evidence which would support a claim that NRLL and SPAN in any way participated in any of the conduct which Hillcrest contends was in violation of 42 U.S.C. § 1983. As alleged by Hillcrest, the only activity of NRLL and SPAN was the actual purchase of the subject property at the tax sale. No allegations were asserted, nor was any evidence presented, that NRLL and/or SPAN participated in the alleged activities of respondent County of Riverside ("County") and the Tax Collector. As a result, contrary to the description of Hillcrest of the questions presented for review, there is no allegation that NRLL and/or SPAN "participated" with the County and the Tax Collector in those acts which allegedly constituted a violation of section 1983.

REASONS FOR DENYING THE WRIT

Respondents NRLL and SPAN were named as defendants in the underlying action on causes of action for quiet title and declaratory relief. Petitioner Hillcrest also filed a claim under 42 U.S.C. § 1983 for civil rights violation. That cause of action did not include NRLL and SPAN as defendants. The sole question presented by the petition is whether Hillcrest had a valid claim for civil rights violation under section 1983 with respect to a tax sale conducted by respondent the County and the Tax Collector. As a result, as to NRLL and SPAN, there is no question which has been presented for review which in any way impacts the underlying decision in favor of NRLL and SPAN and against Hillcrest. In that regard, Hillcrest does not challenge that portion of the judgment entered in favor of NRLL and SPAN.

Moreover, even if Hillcrest had named NRLL and SPAN in the section 1983 cause of action, no valid claim under a civil rights theory existed against those private party defendants. To state a valid cause of action under section 1983, a plaintiff must show at least two elements. First, the plaintiff must show that the defendant may deprive the plaintiff of a right secured by the Constitution or the laws of the United States. Second, the plaintiff must prove that the defendant acted under color of state law. In the absence of one of these required elements, there is no claim for civil rights violation available against a private party, such as NRLL and SPAN. *Anderson v. Consol-Pennsylvania Coal Company*, 40 F. Supp. 1126, 1134 (1997).

Lastly, the decision of the California Court of Appeal (4th Appellate District, Division Two) was a correct and proper determination with respect of the availability of a section 1983 claim to set aside a tax sale. *Fair Assessment and Real Estate Association v. McNary*, 454 U.S. 100 (1981).

I.

THERE IS NO COMPELLING FEDERAL QUESTION PRESENTED BY THE PETITION

This petition challenges a decision from the California Court of Appeal which was not published. Pursuant to California Rules of Court, Rule 977, an opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding with the exception of certain limited situations not pertinent to this action. As a result, the issues addressed by the petition relate solely to the parties to this action and there is no compelling federal question which justifies the issuance of a writ of certiorari, as requested in the petition.

II.

THE POSITION ASSERTED BY HILLCREST, IF ACCEPTED, WOULD GREATLY INHIBIT THE ABILITY TO SELL REAL PROPERTY AT A TAX SALE

The position of Hillcrest, as asserted in its petition, is that a separate claim for civil rights violation under section 1983 should be made available to the owner of real property sold at a tax sale. Hillcrest has taken the position notwithstanding the fact that, pursuant to the provisions of the California Revenue and Taxation Code, adequate

remedies exist in state law to invalidate a tax sale. NRLL and SPAN submit that the position of Hillcrest, if accepted, would result in rendering tax sales perpetually subject to challenge.

California Revenue and Taxation Code sections 3691, et seq., provide a state law remedy to challenge the validity of a tax deed based on alleged invalidity or irregularity of any proceedings in conjunction therewith. In *Quelimane Company, Inc. v. Stewart Title Guaranty Co.*, 19 Cal. 4th 26 (1998), the California Supreme Court discussed the impact that the availability of a civil rights violation action would have upon the title industry. In *Quelimane*, the plaintiff attempted to seek relief from a title insurance company based upon its refusal to issue a title policy to a plaintiff that had purchased property at a tax sale. One of the arguments asserted by the title insurance company was that the business of a title company does not include research of the records of the tax assessor and delinquent tax sales of real property to assure that statutory procedures have been followed and proper notice given. As contended by the title insurance company, an adversely affected person might nonetheless challenge a tax deed on due process grounds, claiming inadequate notice. In dismissing this argument, the California Supreme Court in *Quelimane* stated as follows:

> It is doubtful that a meritorious due process challenge can be made on that basis. Since the state may fix a statute of limitations for the exercise of constitutional rights, it may set a reasonable limit for claims affecting the title of the property. [Citation.] As the high court observed in [*Saranac Land and Lumber Co. v. Roberts* (1990) 177 U.S. at 318]: "[A statute of

> limitations] will bar any right, however high the source from which it may be deduced, provided that a reasonable time is given a party to enforce his rights."

Quelimane, *supra*, 19 Cal. 4th at 54.

By state law, California has set a one year limitation period for challenges to a tax deed. Conversely, the statute of limitations on actions for alleged civil rights violation is controlled by California Code of Civil Procedure section 340, subdivision (3). The statute of limitations under that provision does not begin to run until discovery of the right to pursue the claim or facts sufficient to place a reasonable person on notice. As a result, the availability of a civil rights action to challenge a tax deed would result in a substantial period of uncertainty in which an action to invalidate a tax deed could be commenced.

III.

A SECTION 1983 CAUSE OF ACTION IS NOT AVAILABLE TO CHALLENGE STATE TAXATION

In *Fair Assessment and Real Estate Association v. McNary*, 454 U.S. 100 (1981), the plaintiffs filed a section 1983 action, alleging certain local real property reassessment practices violated equal protection and due process. Individual plaintiffs sought a refund and punitive damages and an organizational plaintiff sought an award of the expenses it had incurred in seeking more equitable assessments. *Id.* at 105-106.

The Supreme Court held

> taxpayers are barred by the principal of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete and may ultimately seek review of the state decision in this Court. [Citations]

Fair Assessment and Real Estate Association v. McNary, *supra*, at 116, n. omitted.

The Court in *Fair Assessment and Real Estate Association* concluded that comity barred an action for damages based on the alleged unconstitutionality of a state tax for two reasons. *Fair Assessment and Real Estate Association v. McNary*, *supra*, at 113-115. First, the recovery of damages under the Civil Rights Act first requires a declaration or determination of the unconstitutionality of a state tax scheme that would halt its operation. *Id.* at 115. "The district court must first enter a declaratory judgment . . . we are convinced that such a determination would be fully as 'intrusive as the equitable actions that are barred by principals of comity.' " *Id.* at 113, n. omitted.) Second, ". . . damages actions, no less than actions for an injunction, would hale state officers into federal court every time a taxpayer alleged the requisite elements of a section 1983 claim." *Id.* at 115. As concluded by the Court, allowing such actions would in every practical sense operate to suspend the collection of state taxes. *Id.* at 115.

The same result was reached in *National Private Truck Council, Inc. v. Oklahoma Tax Commission*, 515 U.S. 582 (1995), where the plaintiffs claimed a state tax on motor carriers violated both the commerce clause and the privileges and immunities clause. The plaintiff filed in state court, under both state law and section 1983. The state court held the tax unconstitutional, and awarded refunds; however, the state court refused to award any relief under section 1983. *Id.* at 585. In affirming the decision of the state court, the Supreme Court held that section 1983 does not call for either federal or state court to award injunctive and declaratory relief in state tax cases where an adequate legal remedy exists. *National Private Truck Council, Inc. v. Oklahoma Tax Commission, supra*, at 589. As concluded by the Court, whether a suit is brought under federal or state court, congress did not authorize the disruption of state tax administration by the bringing of section 1983 actions. *Id.* at 590.

Under the holdings in *Fair Assessment and Real Estate Association* and *National Private Truck Council, Inc.*, the decision of the Court of Appeal herein properly held that Hillcrest had no valid section 1983 claim against County and the Tax Collector.

CONCLUSION

For the reasons set forth herein, NRLL and SPAN respectfully submit that the requested review should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
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No. 99-1708

IN THE

Supreme Court of the United States

HILLCREST DEVELOPMENT,
a California Limited Partnership,

Petitioner,

v.

COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENTS COUNTY OF RIVERSIDE AND R. WAYNE WATTS, TREASURER-TAX COLLECTOR

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Respondent respectfully requests this Court deny the petition for writ of certiorari filed by Hillcrest Development, a California Limited Partnership.

STATEMENT OF THE CASE

Hillcrest, a California Limited Partnership acquired the real property that is the subject of this action in 1984. During the twelve years that Hillcrest owned the property they paid the state property taxes only once when they sold a portion of the property to a third party. Hillcrest failed to pay the ad valorem taxes for the 1988-89 tax year, and the property was tax-defaulted by operation of law on June 29, 1990. Hillcrest thereafter failed to pay taxes for the 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 tax years.

During the twelve years that Hillcrest was the taxpayer/ assessee of the subject property, Hillcrest recorded two documents with the Riverside County Recorder, each with a different "Mail Tax Statements To" address.

Over the 5 year period after the property was tax-defaulted, the Tax Collector mailed regular tax bills to Hillcrest at the address provided by Hillcrest. The tax bills included a reminder to taxpayers to notify the Assessor of any change of address. Sometime in 1993, Hillcrest moved from the address on the tax roll and failed to provide a change of address to the Assessor.

Notice of the Power To Sell Tax Defaulted Property was recorded with the Riverside County Recorder on August 24, 1995. The Tax Collector mailed the notice of the sale of the subject property to Hillcrest by certified mail to the address on the tax roll and the two additional addresses from the

recorded documents.[1] In addition to the certified mail, the Tax Collector's effort to notify Hillcrest of the tax sale included a Department of Motor Vehicle search, a search of the Tax Collector's computer records and indexes, and a search of the Riverside County and Orange County phone directories. The Tax Collector also purchased Lot Book Reports on all properties subject to sale in order to find addresses of parties of interest, which includes assessee/ owners and lienholders of record, to notify them of the tax sale.

On March 26, 1996 the subject property was sold at public auction to the highest bidder, N.R.L.L. Inc., a California Corporation. The tax deed to the purchaser was recorded on April 24, 1996 with the Riverside County Recorder.

In July of 1996, Hillcrest's General Manager, Paul Salata, was contacted by Nelson-Brown Equities Inc. regarding unclaimed assets of approximately $83,000. Mr. Salata signed a fee agreement with Nelson-Brown Equities, and on October 15, 1996, a letter from Nelson-Brown Equities to Paul Salata disclosed the nature of the unclaimed assets. The assets were identified as excess proceeds being held by the County of Riverside from the sale of Assessors Parcel Numbers 381-320-020-1 and 381-320-023-4, the subject property.

On November 7, 1996 Paul Salata signed the documents authorizing Nelson-Brown Equities to act as Hillcrest's agent

---

1. The Tax Collector published all notices as required under the California Revenue and Taxation Code. (Respondent's Brief pages 7-8.)

for the purpose of claiming the excess proceeds from the sale of the subject property. The claim form identified Hillcrest's former property by the Riverside County Assessor parcel numbers. Hillcrest's agent filed a claim for the excess proceeds with the County, and the claim was paid. (Petition Appendix pg. 29 n.4.)

Hillcrest filed their Complaint to set aside the tax sale on October 14, 1997. (Petition Appendix pg.17.)

The California Revenue and Taxation Code sets out a complete statutory scheme for the assessment and collection of property taxes. This scheme incorporates the Federal Constitutional requirement of due process. The taxation scheme has many specific requirements pertaining to notice, and allows for a period of five years in which the taxpayer/ assessee may redeem the property. On top of the five year period is an additional one year period after the tax deed to purchaser has been recorded, in which the taxpayer/assessee can bring an action to have the tax deed set aside and the property returned.

California Revenue and Taxation Code Section 3725 provides the one year statute of limitations from the date of recording the tax deed to the purchaser to bring an action to invalidate the tax sale and have the property returned to the owner. Hillcrest had until April 24, 1997 to file suit to invalidate the tax sale under state law. [2]

---

2. On page 6 of the Petition Hillcrest states that as a result of the Court of Appeals decision neither they nor other property owners in Riverside County have a remedy for a due process violation. This statement in not true. The Court never decided the issue of due process because Hillcrest failed to take advantage of their legal remedy, a suit to invalidate the tax sale.

Hillcrest had actual knowledge of the tax sale in October of 1996 (Petition Appendix pg. 5) and failed to take any action to set aside the tax sale under state law.[3]

A. Petitioner's Contentions

A review of the Petition before this Court would lead one to believe that Hillcrest was faced with the following scenario:

Under California law, Hillcrest's real property was sold for taxes out of the blue, with no notice to Hillcrest and no opportunity for Hillcrest to be heard; that the Court of Appeal by their decision totally exempted municipalities from the Civil Rights Act, 42 U.S.C. § 1983, and gave qualified immunity to private parties; that Section 1983 should apply even though the claim is in a state tax case because the taxes have been paid and are not "anticipatory;" that the Court of Appeal said there was an adequate remedy at law, but there is no adequate remedy because a refund is not available under state law; and finally, the County is going to publish the Court of Appeal's unpublished decision.

B. Decision Of The Court Of Appeal

In reality, the Court of Appeal said that under *Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct 1938, 85 L. Ed. 2d 254 (1985) the applicable statue of limitation for a Section 1983 violation is the State's personal injury statute. (Petition Appendix 3, 16.)

---

3. The Statement of the Case is derived from the facts set out in Respondent's Brief pages 2-8 and the decision of the Court of Appeal.

The Court of Appeal referred to this Court's decisions in *Fair Assessment in Real Estate Assn. v. McNary*, 454 U.S. 100, 102 S. Ct. 177, L. Ed. 2d 271 (1981) and *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995). In those cases the Court discussed the Tax Injunction Act, 28 U.S.C. § 1341, the broad principles of comity, and the interplay between federal non-interference with States taxation and civil liability under Section 1983.

Applying the law to the case at hand, the Court of Appeal said that in order to challenge State taxation, Hillcrest must seek protection of their federal due process right by State remedies as long as those remedies are adequate. The Court of Appeal found that the State remedy, a timely suit to invalidate the tax sale, was an adequate remedy.

The Court of Appeals finding that the state remedy was adequate did not "exempt" or "immunize" the tax collector or the purchaser at tax sale from Section 1983.

REASONS FOR DENYING THE WRIT

I.

THE COURT'S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT AND THE UNITED STATES COURTS OF APPEAL

This case concerns two federal statutes, 42 U.S.C. § 1983 and 28 U.S.C. § 1341. Section 1983 provides a cause of action in state or federal courts to address federal constitutional and statutory violations by state officials. Section 1983 provides that the applicable statute of

limitations is found in the State's personal injury statute. Section 1341 prohibits federal courts from enjoining, etc., the collection of a state tax where there is an adequate remedy at law.

In *National Private Truck, supra*, the Court reiterated the strong principle against federal interference with state taxation. The Court reviewed their findings in *Fair Assessment* barring taxpayers from asserting Section 1983 actions against state tax systems in federal courts. *National Private Truck* extends the principles of federalism and non-interference by saying that Section 1983 does not provide a cause of action in state courts when there is an adequate state remedy available.

In *National Private Truck, supra*, at 518, the truckers not only sought a refund under Oklahoma law, but declaratory and injunctive relief under Section 1983. The Court said, "Whether a suit is brought in federal or state court, Congress simply did not authorize the disruption of state tax administration in this case."

The decision by the Court of Appeal is not in conflict with these cases, and in fact relies on the analysis and holdings in both cases.

II.

ADEQUATE REMEDY AT LAW

Hillcrest tries to distinguish this case from *National Private Truck* on the basis that the property taxes have been paid and they are not seeking a refund of the taxes. However, Hillcrest *is* seeking a refund, or the return of the subject

property. The return of the property to Hillcrest is the very remedy that was available under state law. California Revenue and Taxation Code Sections 3725 and 3728. Extending Section 1983 to a state tax case when there is an adequate remedy at law would effectively undermine the collection of property tax in California.

The Court in *California v. Grace Brethern Church*, 457 U.S. 393, 413, 102 S. Ct. 2498, 2510, 73 L. Ed. 2d 93, 109 (1982) said, ". . . we must construe narrowly the 'plain, speedy and efficient' exception to the Tax Injunction Act." State Courts have an obligation to protect civil rights under state laws.

For a remedy to be adequate, a state remedy must provide an opportunity for a "full hearing and judicial determination" to raise constitutional objections. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 515, 101 S. Ct. 1230, 67 L. Ed. 2d 474 (1981) "A state remedy need not be the best remedy available or equal to that available in federal court." *Sipe v. Amerada Hess Corp.*, 689 F.2d 396, 407 (1982). The fact that the taxpayer did not resort to the state remedy does not make the state remedy insufficient. *Burris v. City of Little Rock*, 941 F.2d 717, 721 (1991).

Hillcrest filed their Complaint To Quiet Title and Cancel Tax Deeds, for Deprivation of Rights Privileges or Immunities Secured by the Constitution and Declaratory Relief on October 14, 1997. (Petition Appendix pg.17.) On page 9 of the Petition, Hillcrest states that they did not seek a refund of the tax in the civil rights action. Hillcrest did seek to set aside the tax sale. If the tax sale is invalidated, the property will once again belong to Hillcrest, in essence a refund of the property.

In California it is well settled that a taxpayer may challenge the Constitutionality of the State taxation system without alleging a violation under Section 1983. The state remedy is not the same as the remedy under the State's personal injury statute of limitations.[4] The State remedy is to pay the property tax and redeem the property prior to a tax sale or to file an action to invalidate the tax sale within one year of the tax deed to the purchaser. The fact that California's statute of limitations to set aside a tax sale is not identical to it's personal injury statute of limitations does not make it insufficient. In California, a tax sale is the culmination of the property being tax defaulted for five years and a one year statute of limitations. Our tax system is not ungenerous.

Allowing Hillcrest to proceed under Section 1983 would eviscerate the state property tax system. Purchasers could not rely on the validity of a tax sale. The sale would be subject to being set aside based on when the taxpayer knew or should have known that his property was sold. The sale would not be finite. Buyers would no longer buy at public auctions, and taxpayers need not make their regular property tax payments because the Tax Collector would not be able to sell their property for delinquent taxes.

The State Legislature has set up time limitations for the collection of property taxes. These time frames allow the taxpayer sufficient time to pay his delinquent taxes and redeem the property, and they provide the government with

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4. California's personal injury statute of limitations is Code of Civil Procedure Section 340(3). This section is also a one year statute of limitations, however, the time to bring an action would run from the time Hillcrest knew or should have known about the tax sale.

sufficient funds for necessary services. To change the State statute of limitations to the appropriate section under *Wilson* for a civil rights violation would allow for uncertainty in the collection of taxes and thwart the State statutory scheme. This is far from a "tangential effect on the taxing activity." (Petition pg. 14.)

The Court of Appeal relied on this Court's decision in *Fair Assessment* and *National Private Truck* to determine that Section 1983 did not provide a remedy "for alleged unconstitutional state taxation" (Petition Appendix pg. 3), "when an adequate legal remedy exists." (Petition Appendix pg. 20-22.)

III.

DUE PROCESS MAY BE CHALLENGED UNDER SECTION 3725

Hillcrest has consistently misstated the Constitutional requirements of due process as set out in *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983). In Appellant's Opening Brief page 17 and the Petition page 9, Hillcrest states and infers that actual notice or receipt of notice of the tax sale is required. *Mennonite*, *supra*, spoke of ". . . notice reasonably calculated to apprise . . . of a pending sale."

The Court of Appeal pointed out that under California law, tax-defaulted property cannot be sold until it has been in default for at least five years. The property owner has the right to redeem the property until it has been sold for back taxes. The Tax Collector must make a reasonable effort to notify parties of interest, and is required to send certified

notice of the tax sale to such parties. A proceeding to invalidate the tax sale and return the property to the owner may be commenced within one year of the execution of the Tax Collector's deed to the purchaser. (Petition Appendix pg. 8, 9.)

Hillcrest had five years to pay the property taxes and redeem the property. Hillcrest had an additional year to file an action to invalidate the tax sale and have the property returned. As indicated in *National Private Truck, supra*, at 516 "the States are afforded great flexibility in satisfying the requirement of due process in the field of taxation." A reasonable statute of limitations can bar claims based on alleged violation of the constitutional right to due process. *Saranac Land & Timber Co. v. Roberts*, 177 U.S. 318, 329-331, 20 S. Ct. 642, 647, 44 L. Ed. 786 (1900).

There has been no expansion of *Fair Assessment,* or *National Private Truck*, by the Court of Appeal's decision. What Hillcrest is really saying is that they should be able to circumvent state law by alleging a civil rights violation in a tax matter.

IV.

THE COURT'S DECISION DID NOT "IMMUNIZE THE COUNTY FROM SUIT UNDER SECTION 1983"

Hillcrest states on pages 6 and 13 of the Petition that the Court of Appeal concluded that municipalities cannot be sued on a civil rights violation under any circumstance because the constitutional violation occurred in connection with the state taxing process. This is not what the Court of Appeal said. They said that Hillcrest could not state a claim under Section 1983 when an adequate state remedy is available. (Petition Appendix 20-22.)

Since there is no viable Section 1983 claim, there can be no immunity or qualified immunity for the County or for the purchaser at tax sale. The State provides an adequate remedy at law of which Hillcrest failed to avail themselves. Their failure to act was barred by a reasonable statute of limitations. Neither the County or N.R.L.L are exempt from Section 1983.

V.

AN UNPUBLISHED DECISION CANNOT BE USED BY PARTIES OR THE COURT

One of the reasons given by Hillcrest for this Court to grant review is that the County may use this decision to "curtail any future proceeding or set up a defense of reasonableness." (Petition pg. 11.) The law as set out by this Court in *Fair Assessment* and *National Private Truck* is sufficient for County's reliance.

Under California Rules of Court 977(a) [Unpublished opinions] "An opinion of a Court of Appeal . . . that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b)". Subdivision (b)(1) [Exceptions] excepts an opinion that is ". . . relevant under the doctrines of law of the case, res judicata or collateral estoppel."

The exceptions to the Rule cited in 9 Witkin *California Procedure, Appeal* § 716 (4th ed. 1996) do not appear to be relevant to this matter. Hillcrest has no grounds to allege that County will violate the Rule.

CONCLUSION

The Court of Appeal followed and applied the law as set out by this Court, finding that a Section 1983 cause of action when applied to the collection of state property taxes was barred when there was an adequate remedy available under state law.

Hillcrest did not argue that "it had no adequate remedy under state law." (Petition Appendix pg. 22.) Hillcrest seeks relief by trying to replace the state's statue of limitations for a sale of tax-defaulted property with a statute of limitations that would save them from their own negligence.

Respectfully submitted,

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(4)

No. 99-1708

IN THE SUPREME COURT
OF THE
UNITED STATES

HILLCREST DEVELOPMENT,
a California Limited Partnership,
Petitioner,
vs.
COUNTY OF RIVERSIDE, a Public Entity;
R. WAYNE WATTS, Treasurer-Tax Collector
of the County of Riverside;
N.R.L.L., INC., a California Corporation;
SPAN, L.L.C., a Limited Liability Company,
Respondents.

Petition for Writ of Certiorari
To The Court of Appeal of California
Fourth District, Division Two

REPLY TO BRIEFS IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

WHERE NO ANTICIPATORY TAX RELIEF IS SOUGHT BY A PROPERTY OWNER, ARE A MUNICIPALITY AND ITS TAX COLLECTOR WHO DEPRIVED THE PROPERTY OWNER OF HIS REAL PROPERTY WITHOUT DUE PROCESS WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS THE RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

ARE PRIVATE PERSONS WHO PARTICIPATE WITH A MUNICIPALITY AND ITS TAX COLLECTOR IN THE DEPRIVATION OF REAL PROPERTY IN VIOLATION OF THE DUE PROCESS CLAUSE WHOLLY IMMUNE FROM SUIT UNDER 42 U.S.C. §1983 AS A RESULT OF THE "PRINCIPLE OF COMITY" AND THE "TAX INJUNCTION ACT".

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1. INTRODUCTION

The respondents' Briefs in Opposition to the Petition of Hillcrest Development, Inc. ("Hillcrest Development") illustrate why this case should be decided by this Court, regardless of whether the underlying case was published. First, the issue of whether a civil rights action under Section 1983 (42 U.S.C. § 1983) may ever be maintained against a municipality and its tax collector in a tax related case is framed in simple terms because the issue was decided as a matter of law. After concluding that the trial court erred in granting summary judgment on the basis that the civil rights action was time barred, the California Court of Appeal stated:

> "The error, however was harmless. Defendants were entitled to summary judgment in any event, because section 1983 does not afford a remedy for allegedly unconstitutional state taxation." Opinion, page 3 [Petitioner's Appendix, page A-3].

Second, the case involves an issue of national importance, i.e., whether Mennonite Board of Missions v. Adams, 462 U.S. 791, 800 (1983), has been effectively overruled by Fair Assessment in Real Estate Ass'n., Inc. v. McNary, 454 U.S. 100 (1981), and whether a property owner is barred from any civil rights action where taxes might be tangentially involved. Third, the California Supreme Court **published** case of Quelimane Co., Inc. v. Stewart Title Guaranty Co., 19 Cal.4th 26 (1998), cited by Respondents N.R.L.L. and SPAN ("N.R.L.L." and "SPAN") in opposition at page 5 of their Brief suggests a disinclination on the part of the highest court in California to even consider a case in which a tax deed is challenged on due process grounds. Fourth, the respondents fail to even discuss or distinguish this Court's decision in Jefferson County, Ala., v. Acker, 527 U.S. 423

(1999), as to the meaning and limitation of the Tax Injunction Act.

2. THE NONPUBLICATION OF THE DECISION BY THE CALIFORNIA COURT OF APPEAL SHOULD NOT EFFECT THE REVIEW BECAUSE OF THE IMPORTANCE OF THE ISSUES RAISED AND THE FACT THAT THE DECISION AFFECTS THE CONDUCT OF A PUBLIC AGENCY

Unlike a case involving private parties, this case involves the County of Riverside, a municipality and its Tax Collector whose conduct affects a county of in excess of a million people. The County of Riverside and the Tax Collector have convinced a panel of the Division of the Court of Appeal which hears all of the Riverside appeals that they are not subject to a Section 1983 action whenever the conduct has some effect upon tax administration. Though the Tax Collector and the County of Riverside might not be able to cite the case in any subsequent case [other than for the ostensible purpose to show good faith, etc], they will be free to show a copy of the "unpublished" decision to any property owner [or the owner's counsel] who asserts that his or her constitutional rights were violated and point out that the case will be reviewed by a panel of the same division that decided this case. They will also point out that review by the California Supreme Court has been denied. The "chilling effect" on the property owner and counsel to then bring a civil rights action is obvious.

3. THE RESPONDENTS IN THEIR BRIEFS MISCHARACTERIZE THE FACTS AND THE PROCEDURAL ASPECT OF THE CASE

In their Briefs in Opposition to Hillcrest Development's Petition, respondents mischaracterize some of the facts and the nature of the action brought by Hillcrest Development. It is true, as stated by the respondents and acknowledged by Hillcrest Development, that Hillcrest Development was in default of its taxes through a comedy of errors. As to the post-1993 notices sent by the Tax Collector to Hillcrest Development, including the notices of the tax sale, the notices were returned to the Tax Collector. Even though the Tax Collector had the name of the general partner of Hillcrest Development, knew that Hillcrest Development and the general partner were officed in Orange County, California, which was the adjoining county to the County of Riverside, the Tax Collector failed to check the Orange County phone directory for the general partner, whose number was listed, or the Orange County Fictitious Business Name Statement of Hillcrest Development, which would have disclosed the current address and phone number of the general partner and Hillcrest Development. Numerous other documents would have disclosed such information and that is why the trial judge and the Court of Appeal assumed for purposes of the Motion for Summary Judgment that Hillcrest Development had alleged sufficient facts to support its claim under 42 U.S.C. §1983.

In their Brief, all of the respondents referred to an October 15, 1996 letter to Hillcrest Development from Nelson-Brown Equities, Inc., a private asset locator firm ("Nelson"). Respondents suggest that Hillcrest Development waited a year to bring an action after receiving a letter from Nelson concerning excess proceeds from the tax sale. The action was

brought less than one year of the date of the letter, and the letter did not disclose that the proceeds were from a "tax sale". When Nelson first contacted Hillcrest Development, Hillcrest Development called the County of Riverside, because Hillcrest Development's building project was only in Riverside, to see if there was any funds due it from the County. Hillcrest Development believed that if there were proceeds due it, they might have been due as a result of its development obligations to the County of Riverside, who required it to transfer property for easements and to pay for sewer improvements that benefitted other property owners. Such property owners would have to reimburse the costs once they developed their property.

After the records were reviewed by the County of Riverside, Hillcrest Development was told by county employees that no proceeds were due it. When the general partner did receive the October 15, 1996 Nelson letter, he did not understand that the proceeds were from a tax sale. He learned of the tax sale in September of 1997 and within a month brought this action. If the October 15, 1996 letter placed Hillcrest Development on notice, its civil rights action was still timely in that it was brought within one year of the date of the letter.

As to the statement of N.R.L.L. and SPAN at page 2 of their Brief that no evidence was produced as to their involvement in the constitutional violation, no evidence could have been introduced because there was no trial, and the issue of whether the pleadings were sufficient was not the subject of the County of Riverside and Tax Collector's Motion for Summary Judgment. N.R.L.L and SPAN simply joined in the Motion for Summary Judgment, which was granted based upon the conclusion of the trial court that the civil rights action was barred under Section 3725 of the California Revenue & Taxation Code. Petitioner's Appendix, page A-26.

As to the claim of N.R.L.L. and SPAN that they were not a party in the civil rights action, their assertion is incorrect. The quiet title action and the declaratory relief action to invalidate the tax deed incorporated by reference the civil rights action which was the basis for the action against all of the parties. In the civil rights action itself, all of the prior allegations as against all of the defendants were incorporated by reference. Not until they filed their Appeal Brief did N.R.L.L and SPAN raise the issue as to whether a private party had liability under the civil rights action, an issue not addressed by the Court of Appeal.

In their Brief at page 2 (fn. 2.), the County of Riverside and Tax Collector state that: "The Court never decided the issue of due process because Hillcrest failed to take advantage of their legal remedy, a suit to invalidate the tax sale." Not so. As stated by the Court of Appeal, "Hillcrest filed this action to set aside the tax sale." Opinion [Appendix, A-2, Petition]. The reason the Court of Appeal refused to consider Hillcrest Development's claim was because it concluded that this Court's decision in Fair Assessment, supra, barred a civil rights action in all state tax cases where the state provided a procedure for a tax refund. [Appendix, A-22]

4. THE CLAIM OF N.R.L.L. AND SPAN IN THEIR BRIEF THAT HILLCREST DEVELOPMENT DID NOT CHALLENGE A PORTION OF THE JUDGMENT IN FAVOR OF N.R.L.L. AND SPAN IS INCORRECT

In that Hillcrest sought to invalidate the tax deeds based upon its lack of notice of the tax sale, the claim by N.R.L.L. and SPAN at page 3 of its Brief that "Hillcrest does not challenge that portion of the judgment entered in favor of NRLL

and SPAN" is nonsensical. As stated by the Court of Appeal, "the issues on which we ultimately resolve this appeal are essentially identical with respect to all defendants." Appendix, A-8. Hillcrest appealed from the entire judgment in favor of all of the defendants. Petitioner's Appendix, A-7 - A-8.

As to the claim that the elements are missing for a civil rights violation against a private party, such claim is untrue, was not raised as part of the Summary Judgment Motion, and was not an issue decided by the Court of Appeal. N.R.L.L. and SPAN were defendants in the state action because they acquired the real property at the invalid tax sale as set forth in the Complaint of Hillcrest Development. As recognized in Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982), a private person may be sued when he is a participant in the state action which results in the deprivation of the property of another. See, also, Mennonite, supra.

5. THOUGH THERE WAS NO EVIDENCE THAT A CIVIL RIGHTS ACTION WOULD HAVE ANY IMPACT ON TAX SALES, ITS EFFECT, IF ANY, WOULD NOT BAR RELIEF

As did the Court of Appeal in its Opinion, the County of Riverside and Tax Collector state that granting relief to Hillcrest Development would have a "chilling effect" on tax administration. None of the respondents submitted any evidence that the availability of a civil rights action would have any significant effect on the ability of the Tax Collector to sell real property at tax sales. In all likelihood, there is no such evidence in that Mennonite was decided over 26 years ago without any reported catastrophe. This is either due to general compliance by tax authorities with Mennonite or the fact that purchasers at tax sales are willing to take the risk of the setting

aside of their deeds when they buy, as did N.R.L.L., property at an 85% discount to value.

6. CALIFORNIA HAS NO ADEQUATE REMEDY WHERE AN OWNER HAS BEEN DEPRIVED OF ITS REAL PROPERTY WITHOUT DUE PROCESS

The County of Riverside and Tax Collector parrot the statement of the Court of Appeal that Hillcrest Development did not question the adequacy of the remedy under California Law. Hillcrest Development did not question the adequacy of the remedy of California law as to a tax refund because it was not seeking a refund. As to property owners who do not get notice in order to file a timely action, the California system provides no remedy because California's statute of limitations with respect to the validity of a tax deed commences when the tax deed is recorded rather than when the notice is provided to the property owner. Adequacy of remedy is also irrelevant with respect to a civil rights action when the aggrieved property owner is not seeking anticipatory relief against a state tax. Where, as here, the aggrieved property owner seeks only the return of his real property or damages resulting from its deprivation of property without due process, its right to bring suit under the Civil Rights Act is not affected by the "Tax Injunction Act" or principle of comity because the court, in determining subject matter jurisdiction under Section 1983 must first determine if the plaintiff is seeking to invalidate a tax. See, e.g., Kerns v. Dukes, 153 F.3d 96, 100 (3d Cir. 1998). Only after determining that the plaintiff is seeking to invalidate a tax or seek damages for the imposition of what are alleged to be wrongful taxes (Fair Assessment, supra) does the issue of the adequacy of damages come into play. This is what Hillcrest Development argued to the Court of Appeal, who concluded

that subject matter jurisdiction never lies under Section 1983 when the action has any potential effect on tax administration. In that a refund action would not provide a full hearing of the constitutional issues to a property owner who has been deprived of its property without due process, the remedy would not be adequate as a matter of law. See, Rosewell v. LaSalle Nat. Bank, 450 U.S. 503, 514-516 (1981). The Court of Appeal denied Hillcrest Development its right to have the constitutional issues adjudicated.

7. THE CONCEPT OF A STATUTE OF LIMITATIONS WITHIN A STATUTE OF LIMITATIONS IS CONTRARY TO THE UNIFORMITY REQUIRED BY *WILSON v. GARCIA* IN DETERMINING WHAT STATUTE OF LIMITATIONS APPLIES

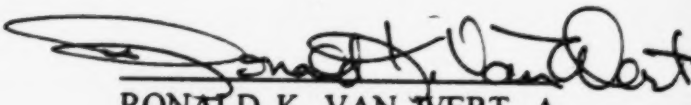
As to the timeliness issue, there is a suggestion by the Court of Appeal and argument by the County of Riverside and Tax Collector that there is a statute within the statute of limitations applicable to civil rights, i.e., if discovery of notice occurs prior to the running of the most analogous state statute of limitations, then the civil rights statute of limitation does not apply. If their argument was adopted, a property owner, who through happenstance learned of a tax sale within a short period of the running of a statute of limitations which is not applicable to a civil rights action, would be barred from bringing his civil rights action, whether the notice was a little more than five months [as asserted in this case, even though the fact was disputed], one month or one day. This lack of uncertainty as to what statute of limitations applies to a civil rights action is why this Court required in Wilson v. Garcia, 471 U.S. 261 (1985), national uniformity as to what state statute of limitations applies to civil rights actions, i.e., the state personal injury statute of

limitations. Hillcrest Development satisfied both the personal injury statute of limitations and the federal accrual rule, even if the Nelson letter started the statute of limitations. Hillcrest Development was entitled to bring its civil rights action within one year of when it received notice. It did so, whether it was charged with the notice when it received Nelson's letter or when its general partner saw the "for sale" sign on its property.

8. CONCLUSION

This case presents a serious challenge to the validity of Section 1983 actions in any civil rights case where a governmental agency or state officer might be involved in the tax process and in such process deprives a property owner of his property without Due Process. Petitioner respectfully requests this Court grant certiorari to review the decision of the California Court of Appeal.

Dated: June 1, 2000



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